

**UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

**TOUCHPOINT SUPPORT SERVICES,
LLC**

Employer,

and

**MICHIGAN COUNCIL 25, AMERICAN
FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES
(AFSCME), AFL-CIO**

Petitioner.

Case No. 07-RC-258867

EMPLOYER’S EMERGENCY MOTION TO STAY THE ELECTION

Pursuant to Sections 102.67(j) of the Rules and Regulations of the National Labor Relations Board (the “Board”), Touchpoint Support Services, LLC (“the Employer”), by and through its undersigned counsel, hereby submits this Emergency Motion to Stay The Election as directed by the Regional Director’s May 4, 2020 Decision and Direction of Election (“Decision”). A mail ballot election in this case is scheduled to commence on May 19, 2020.

Section 102.67(j) allows parties to seek a stay of proceedings, including representation elections. The Rules note that “[r]elief will be granted only upon a clear showing that it is necessary under the particular circumstances of the case.” This extraordinary relief is warranted in the instant case given the impact the COVID-19 pandemic has had on the Board’s representation processes. Also, given that the election will start in less than two weeks, a stay is appropriate until the Board issues clear guidance concerning how elections should be conducted (which the Employer submits should be by manual ballot).

In fact, as described below and in the Employer's accompanying Request for Review, the instant case is remarkably similar to Atlas Pacific/Gulftech, No. 27-RC-258742, in which the Board recently granted the Employer's Emergency Motion to Stay the Election pending the Board's assessment of the Regional Director's decision to direct a mail ballot election over the employer's objection.

In the present case, the Regional Director blatantly disregarded Board precedent respecting the limited use and inherent unreliability of mail ballots, and ignored record evidence demonstrating that a manual ballot election is perfectly feasible to accomplish because eligible voters are all reporting to the Employer's work site, and thus not scattered or otherwise not present for a manual ballot. The Regional Director also disregarded clear evidence of problems plaguing the United States mail in the Detroit metropolitan area, which is likely to compromise ballot delivery and return. Moreover, the Regional Director refused to reveal the Regional Office's plans to assure the safe (e.g. contamination-free) distribution of mail ballots to eligible voters, and failed to explain how the Region will track and date-stamp returned ballots and comply with Casehandling Manual and other established requirements in light of the fact that the Regional Office is closed. As a result, the Employer has grave concerns that ballots will be lost or arrive after a Regional Director-imposed deadline, thereby disenfranchising voters through no fault of their own. In sum, there are so many unanswered questions that allowing the mail ballot election to proceed would be a miscarriage of justice.

The eligible voters are essential front line workers reporting to the workplace and interacting every day, and thus present for a manual vote. At its core, the Regional Director's mail ballot order is based upon a speculative and misguided desire to reduce the possibility that Regional staff will be exposed to COVID-19, at the expense of reliability as well as laboratory

conditions and overall workplace democracy. This type of ad hoc reordering of priorities is inconsistent with Board precedent, contrary to the Agency's mission, and antithetical to the salutary purposes of the National Labor Relations Act.

In a similar vein, the Region cannot have it both ways. In its April 1, 2020 memorandum allowing representation elections to resume, the Board noted that "conducting representation elections is core to the NLRB's mission...." However, the Board cannot permit elections to be scheduled following a "business as usual approach" by precluding manual ballot elections from being conducted. The Board's immediate guidance is necessary to create a uniform approach for Regional Directors to follow. Finally, a stay is warranted because the Decision has incorrectly compelled the Employer to file a Request for Review by May 18, 2020, rather than 14 days following a final disposition by the Regional Director.

Therefore, for the reasons illustrated herein as well as the Employer's Request for Review, the election in this case should be stayed pending the outcome of conclusive Board guidance concerning the appropriateness of a mail ballot election during the COVID-19 pandemic.

CONCLUSION

For the foregoing reasons, the Board should grant the Employer's Request for Review and summarily stay the election.

Respectfully submitted,
JACKSON LEWIS P.C.

Thomas Piekara
Daniel Schudroff
Christopher Repole

/s Daniel Schudroff
Daniel Schudroff

ATTORNEYS FOR TOUCHPOINT SUPPORT SERVICES, LLC
Dated: May 7, 2020

CERTIFICATE OF SERVICE

I hereby certify that, on May 7, 2020, I caused a true and correct copy of the foregoing Emergency Motion to Stay The Election to be served upon Petitioner MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO through its representative, Reno Thompson, via e-mail, at the following address of record: rthompson@miafscme.org. I also certify that I filed this document with the Executive Secretary through the Board's E-Filing system.

/s Daniel D. Schudroff
Daniel D. Schudroff

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